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INTERNATIONAL BUSINESS MACHINES CORPORATION  
INTELLECTUAL PROPERTY LAW DEPARTMENT  
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**JUL 26 2004**

**OFFICE OF PETITIONS**

In re Application of	:	
Cooper, et al.	:	
Application No. 10/042,007	:	ON PETITION
Filed: January 8, 2002	:	
Attorney Docket No. AUS920010030US1	:	

This is a decision on the renewed petition to revive under 37 CFR 1.137(a), filed April 15, 2004.

The renewed petition under 37 CFR 1.137(a) is **GRANTED**.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice to File Corrected Application Papers, mailed April 5, 2002. This Notice set a shortened statutory period for reply of two months for applicants to submit substitute drawings in compliance with 37 CFR 1.84. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above-identified application became abandoned on June 6, 2002. A Notice of Abandonment was mailed on January 26, 2004. Applicants filed a petition to revive under 37 CFR 1.137(a) on February 12, 2004. However, because applicants failed to submit a proper document report evidencing non-receipt of the Notice to File Corrected Application Papers, the petition was dismissed in a decision mailed on February 26, 2004.

Petition Under 37 CFR 1.137(a):

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.<sup>1</sup>

Moreover, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable."<sup>2</sup>

On renewed petition, petitioner has submitted a satisfactory docket report indicating that the Notice to File Corrected Application Papers was not received.

In view of the above, it is concluded that petitioner has met his burden of establishing that the delay was unavoidable.

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<sup>1</sup> In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

<sup>2</sup> Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

The application is being forwarded to the Office of Initial Patent Examination for pre-examination processing, using the drawings filed on February 12, 2004.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

*Patricia Pearson Ball*  
*for*

Charles Pearson  
Director  
Office of Petitions